

Approved 5-30-2008

**THE SURF CLUB OF MARCO, INC.
BOARD OF DIRECTORS TELECONFERENCE MEETING
APRIL 14, 2008**

The meeting was called to order at 1:10 p.m. by President M.T. Myers in the Social Room at the Surf Club of Marco, Marco Island, Florida. Board members in attendance via telephone were: Ms. Myers, Mr. McCluskey and Mr. Turk. Attending from Hilton Grand Vacations were: Sharry Luneke – Resort Manager, Chris Schmadtke – Assistant to the Resort Manager, Lael Kilpatrick – Regional Manager Resort Operations and Riki Martin – Administrative Assistant and Acting Recording Secretary for this meeting. Owners in attendance have signed the sign in sheet. Also in attendance via telephone was: Attorney William Morris.

Ms. Myers requested that the tape of this meeting be retained as part of the permanent record.

Ms. Myers introduced the board members.

Mr. Sherwin Turk lives in Potomac, Maryland and is currently serving his second term as Secretary/Treasurer on the Surf Club Board of Directors. He is an attorney in Washington D.C. He asked Ms. Myers to retain counsel to discuss the subject of this telephone conference call, and she has retained Attorney Morris.

Mr. McCluskey lives in Cape Cod, Massachusetts and is serving his second year of a three year term on the Board of Directors as Vice President. He is Retired President of one of the largest electrical and telecommunications companies in the New England area. He looks forward to serving on the board for the interest of all owners.

Ms. Myers lives in Spartanburg, South Carolina and has served eight years on the Board of Directors she is currently serving as President. She is in real estate, investments and private investigations for corporations.

Ms. Myers stated she will call on the owners for comments on this particular agenda item only, however before this meeting is adjourned she would like to give the owners an opportunity to ask questions or make comments on any additional concerns that they might have.

Mr. Turk reminded Ms. Myers that the time available for this call is limited, and that the purpose of this meeting is to discuss with counsel the issue of the 1992 proposed by-law. Mr. McCluskey agreed with Mr. Turk.

DISCUSSION WITH ASSOCIATION ATTORNEY RELATED TO LEGAL ISSUES RAISED BY MS. MYERS CONCERNING THE 1992 PROPOSED BY-LAW.

Ms. Myers gave an overview of the subject matter.

A special meeting of the Surf Club of Marco Condominium Association was held on May 18, 1990. The purpose of the meeting included the election of three persons to serve on the Board of Directors until the next annual meeting of the owners. The official documents were turned over by the Developer (Deltona) to the Association and were accepted by President Wayne Roush. Mr. Wayne Roush was elected President, Mr. Wayne Bright was elected Vice President and Ms. Lorain Bittner was elected Secretary/Treasurer. Ms. Bittner was not present at that meeting and Mr. Harald Osvold was appointed as Special Consultant. Mr. Roush and Mr. Bright concurred that the terms of the board members should be staggered and the board increased to five members. The owners were to be notified at a special meeting to be held on November 2, 1990.

July 17, 1990 teleconference meeting was held. Mr. Roush asked the procedure required to increase the size of the Board to five members. Mr. Krieger (HGV) explained that the association membership would have to approve the change in number and also the change in terms of office. The notification would be included in the next newsletter.

At the November 2, 1990 meeting Mr. Roush presented changes to the by-laws of the Surf Club Association for discussion. A motion was made and seconded to approve the By-Laws as amended.

At the May 10, 1991 Annual meeting, Mr. Roush reported that there were not sufficient votes to pass the by-law proposal at that time and the meeting was to be held open for 90 days to get an adequate number of votes.

August 8, 1991 the Annual meeting of the Surf Club was reconvened. The purpose of the meeting was to try to obtain sufficient owner participation necessary to amend the By-Laws adopted by Deltona, currently in effect, with the revisions proposed by the Board of directors. The minutes state that "Mrs. Burback noted there were 1092 unit weeks represented both in person and by proxy, which represents 48.6% of owner response. This does not meet the required 66-2/3% affirmative votes. Therefore, the current By-Laws will remain in effect."

At the November 6, 1991 meeting Mrs. Burback updated the Board members concerning another attempt to amend the By-Laws with one more mailing to the owners. The Special Meeting of the Surf Club owners was tentatively set for December 18, 1991 where the votes would be counted.

At the December 30, 1991 meeting Mrs. Burback reported that there were 1122 votes in favor of the By-law revisions and 49 opposed, for a total of 1171 votes. Mr. Krieger pointed out that the proxy count was insufficient to pass the proposed By-Law Revision. Motion was made and seconded to continue the Special Meeting for up to 90 days to secure the needed proxies for passage of the proposed By-Law Revision.

At the February 18, 1992 continuation of the Special Meeting, the minutes state that "Mr. Krieger noted that there were 1,491 weeks represented by proxy out of a possible 2,244 unit weeks which meets the needed 66-2/3%, thus the proposed revisions have been approved and will take effect immediately."

On February 26, 1992 a Certificate of Amendment/By-Laws was signed, and was then recorded on March 25, 1992 in the Collier County Records, Book1698/ Page 2139. The Certificate states that the attached Amendment to the By-Laws for the Surf Club of Marco Condominium Association, Inc. "was duly adopted by the Association membership at a duly noticed Member's meeting held on February 18, 1992 and that said Amendments were passed by the required vote." The document was signed by directors Wayne Roush and Lorain Bittner, both signatures were notarized, and Mr. Roush's signature was witnessed by three persons.

At the May 6, 1992 Annual Meeting Mr. Roush stated that the By-Law Revision had been approved. Mrs. Burback gave the tellers report for the May meeting. The minutes state there were 1,086 unit weeks represented both in person and by proxy from a possible 2,244 unit weeks, which represents 48.3% owner participation. There were nine (9) candidates seeking election to the Board of Directors, one of which will serve a three year term.

Ms. Myers questions whether a sufficient number of votes were cast to amend the Bylaws in 1992. She stated she is concerned with the process not just that the number of votes cast did not meet the required 66-2/3% votes. She feels the Association could have a challenge on an election going forward based on the By-Law. She said that Florida Statue 718.112(b) 3 states that any proxy given shall be effective only for that specific meeting for which it was originally given and shall be only effective for 90 days. Those particular meetings went from 1990 to 1992 and would have been over 90 days. Another concern she had that the approval that is needed 66-2/3% of all owner's affirmative votes. Also no amendment shall be made that is in conflict with the Articles of Incorporation or the Declaration of Condominium. At the time this particular Board in 1992 tried to amend this By-Law they did not take into consideration that the Articles of Incorporation were not amended, because they did not match the Articles of Incorporation which states that a director has to go off the Board at the next Annual Meeting.

Ms. Myers suggested to mail out the candidate forms that were received by January 31, 2008 and go forward and elect three members for a one year term as the original By-Laws stated and advise these candidates due to the 1992 By-Law possibly being invalid or illegal that they would serve a one-year term. She proposed that the Board appoint Mr. McCluskey and Mr. Turk as officers to continue on this Board and we would in a sense have a five member board at that time. She suggested at the May 29, 2008 meeting the Board of Directors propose to send the By-Law Revision to the owners for voting to increase the Board to five members with three year terms to be voted on at the 2009 Annual meeting.

Mr. Turk stated that in response to Ms. Myers concerns about possible litigation expenses and penalties that regardless of the action the Board of Directors takes any owner can sue the Association. The Board should act in a manner that is reasonable and recognize our fiduciary duty to the owners. That is the reason he asked the Association to retain independent counsel and obtain Counsel's opinion.

The following questions were asked by Mr. Turk to Attorney Morris, and the following answers were given by Mr. Morris:

Q. Has Attorney Morris been retained for the purpose of By-Law Revision?

A. Mr. Morris has been retained as counsel on an as needed basis.

Q. If the Association retains Attorney Morris is there an attorney client privilege and if so what is the proper way to proceed.

A. Attorney Morris stated nothing said at today's meeting would be privileged as there are owners present at this meeting. Attorney Morris suggested having a Board meeting to discuss the potential of litigation arising from the recorded amendment in 1992.

Q. Attorney Morris provided a letter dated April 2, 2008 (letter attached as Exhibit A) at which he states "assuming the minutes are correct then the By-Laws are improperly adopted." Did Mr. Morris conduct any fact investigation to lead him to conclude that the minutes were incorrect?

A. Attorney Morris stated "No," that he went on the basis of the record that was provided to him and he did no independent investigation.

Q. Is it fair to say that Mr. Morris did not reach a conclusion that the minutes were improperly adopted and the By-Law Amendments were illegal?

A. Based on the minutes Attorney Morris concluded that it was not properly adopted since it did not appear to have sufficient votes. Attorney Morris stated that the Condominium Act which applies here was amended—effective January 1, 1992 so that any vote taken after that date can only be by limited proxy.

Q. Mr. Turk asked if it could be possible that the By-Law Amendments were properly adopted.

A. Attorney Morris said that it was possible and his answer would be yes.

Q. Attorney Morris' letter dated April 2, 2008 rendered a legal opinion stating that the proposed By-Law was never adopted and continued conduct of business by The Surf Club of Marco Condominium Association, Inc. in accordance with the amendment would be illegal. Attorney Morris advised the Association to forward a new notice of election to all unit owners in a timely fashion. Even if it required rescheduling the Annual meeting?

A. Attorney Morris stated that was his opinion based upon the minutes of the meeting that reflected an inadequate vote to adopt the By-Law.

Q. Mr. Turk asked whether that opinion was based on an assumption that the minutes were correct?

A. Attorney Morris assumed the minutes were correct as they are the official record of the Association. Attorney Morris stated obviously if we hypothesized that the minutes are wrong and we had adequate votes and the wrong number was written down his answer would be yes. That is human error and that is certainly a possibility. He noted that this is referred to in law as a "scrivener's error," and that such errors do occur.

Q. Mr. Turk asked because the President then filed a sworn affidavit which he had notarized and witnessed, that the amendment was passed with the required votes, that would be in conflict with the conclusion that the minutes reflect a correct vote?

A. Yes it would.

Q. Mr. Turk asked would the Board have reasonable basis in going forward either way at this point -- either by concluding that the bylaw was properly adopted and holding the next meeting as previously noticed to the owners, or by declaring that the February 1992 minutes are correct and going with Ms. Myers interpretation?

A. The Board would be able to proceed based on the sworn statement. Attorney Morris stated based on his experience in court that the more likely outcome of a judge in determining the issue would be that the number and the affidavit was in error if the amendment was not properly adopted. However, he stated this would be a case where he could advise the Board you could go either way.

Mr. Turk stated that Ms. Myers has taken the liberty to write a letter dated April 7, 2008 to the Department of Business and Professional Regulation (DBPR), Florida Bureau of Compliance, sending them a copy of Mr. Morris' letter to her of April 2, 2008. (Letter is attached as Exhibit B). Mr. Morris stated that he was not aware of Ms. Myers' letter.

Mr. Turk stated the Board has a fiduciary duty to the Association's owners. They have an expectation that everything the Board has done over the past 15 years was legal. If we suddenly cast aside the election of directors that has gone on for 15 years this would question the legitimacy of all the decisions those directors have ever taken. That could subject the Association to further litigation. In his opinion Mr. Roush Board President in 1992 signed a sworn affidavit stating that the required number of votes were provided, and would not have done so if the required number of votes had not been obtained. Mr. Turk has contacted Harald Osvold who was Board Consultant in 1992 who stated that he was sure the amendment was properly adopted and, if anything, the minutes were incorrect or the number recorded does not reflect the Association owned weeks voted by the Association's officers.

Mr. Turk has spoken to Barbara Burback who was the recording secretary at that time. She reminded Mr. Turk that the meeting had been extended several times in order to get the necessary votes. Mr. Turk also spoke to Ms. Bittner who was on the Board at that time. She does not have any recollection one way or the other. Based on his review of the facts, Mr. Turk believes the By-Laws amendments were legally adopted. He noted

that typographical errors can occur in the minutes of a Board meeting, and pointed out that this just happened at the October 18-19, 2007 Board meeting chaired by Ms. Myers, where Ms. Myers is reported to have said that 1186 votes are needed (rather than the correct number of 1196 votes), to amend the bylaws. He feels it is in the best interest to the owners to hold the upcoming election as scheduled.

The following questions were asked by Ms. Myers to Attorney Morris:

Q. Is it correct that Florida Statue 718112(b) 3 states that any proxy given shall be only given for 90 days and once it is given for 90 days you must start over with a brand new initiative?

A. Florida Statue 718112(b) 3 was statue 718112(B) 2 at that time does say that a proxy is not effective for more than 90 days from the day of the meeting for which it is given. This was changed in January 1, 1992 to limited proxy. Attorney Morris has no evidence to confirm that the proxies were over 90 days old.

Q.What is the interpretation on minutes?

A. Corporate minutes are considered business records of the corporation and are admissible without objection because of that fact.

Attorney Morris offered this argument might qualify for Declaratory Judgment from the Division of Condominiums, which could be a relatively inexpensive method to determine whether or not the amendment was properly adopted. The Board might be able to put together a query based upon the information. Both sides could be presented to the division with a request for judgments.

Ms. Myers asked the length of time this would take? Mr. Morris stated that in the past, this has taken 60 – 90 days.

Mr. McCluskey stated that speaking for himself as a Director we are rushing to judgement and we should move forward with the election using the existing By-Laws and continue to try to resolve this issue in the future. Mr.Turk was in agreement.

Mr. Turk noted that Mr. McCluskey had transmitted an email at 3:23 p.m. on April 11, 2008, in which he requested that the Board go forward with the mailing of the election ballot as it is presently configured.

MOTION was made by Mr. Turk and seconded by Mr. McCluskey that we adopt Mr. McCluskey's suggestion and that we authorize Hilton Grand Vacations to now mail a letter from Mrs. Luneke to the owners advising them of the May 30, 2008 Annual Meeting and the limited ballot and proxy with the form needed for mailing by multiple owners, to be mailed out to owners as soon as it can be printed. Mr. Turk voted aye, Mr. McCluskey voted aye and Ms. Myers voted no. Motion carried.

The Board was in agreement to make two changes to the ballot. The form currently says "limited ballot/proxy;" this is to be changed to "limited proxy/ballot." The sentence that stated "I/We hereby appoint the Secretary of the Association, or _____ as my proxy to represent the undersigned, and direct him/her cast my/our vote for such business, other than the items listed above, as may come before the meeting." Add the word "**other**" before "such business that may come before the meeting."

OWNER COMMENTS

Mr. Turk suggested that due to time limitations, any owner comments be submitted to the Board members in writing.

Ms. Myers told the owners present that she was sorry they were not allowed to speak at this time. She also suggested that they send their comments to the Board in writing. She thanked them for attending the meeting.

Ms. Myers thanked Attorney Morris for attending the meeting.

ADJOURNMENT

MOTION was made and seconded to adjourn the meeting. All voted in favor.

The meeting adjourned at 2:20 p.m.